

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

JUDGE PHILIP MARTINEZ

FILED
JUN 23 PM 3:26
CLERK OF DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY _____ DEPUTY

JOSE A. MORENO,

Plaintiff,

v.

Civil Action No. EP-2003-CA-_____

CROWN EQUIPMENT CORPORATION
d/b/a CROWN LIFTTRUCKS COMPANY
and DARR FMH, L.P. d/b/a FMH
MATERIAL HANDLING SOLUTIONS,

Defendants.

EP03CA0239

NOTICE OF REMOVAL PURSUANT TO
28 U.S.C. § 1446 OF DEFENDANT
CROWN EQUIPMENT CORPORATION
d/b/a CROWN LIFTTRUCKS COMPANY

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Defendant, CROWN EQUIPMENT CORPORATION, d/b/a CROWN LIFTTRUCKS COMPANY hereinafter referred to as "Petitioner," and files this its notice of removal pursuant to 28 U.S.C. § 1446 and in support thereof would respectfully show the Court as follows:

1. Petitioner is a Defendant in a lawsuit filed by JOSE A. MORENO, in the 171st Judicial District Court of El Paso County, Texas on March 6, 2003. Plaintiff is a resident of El Paso County, Texas and citizen of the State of Texas. Petitioner, CROWN EQUIPMENT CORPORATION is a corporation organized and existing under the laws of the State of Ohio, with its principal place of business in the State of Ohio, County of Auglaize. Co-Defendant DARR FMH, L.P. d/b/a FMH MATERIAL HANDLING SOLUTIONS is a Delaware Limited

Partnership with its principal place of business in Westminster, Colorado. Co-Defendant has provided its written consent to this removal which is attached hereto as Exhibit "A".

2. Copies of all process, pleadings and orders served upon Petitioners and all pleadings in the El Paso District Clerk's file are attached hereto as Exhibit "B".

3. On or about March 26, 2003, Petitioner was served, via certified mail on its registered agent for service of process, with Plaintiff's Original Petition in the state court action. Plaintiff, in that Petition, asserts causes of action for various damages arising from an allegedly defective product. The petition was silent as to the amount in controversy in this case and was not removable at that time. On April 29, 2003, Petitioner served plaintiff with defendant's first requests for admission inquiring, among other things, as to the amount in controversy. On May 29, 2003, plaintiff served Petitioner with his responses to those requests for admission. A true and correct copy of plaintiff's response to defendant's requests for admission is attached hereto as Exhibit "C".

4. In those responses, plaintiff admitted that the amount in controversy in this case exceeds \$75,000 (Exhibit "C"). The receipt of these requests for admission was the first document (i.e. "other paper") from which it was first ascertained that the case is one which has become removable under 28 U.S.C. § 1446. This Removal is being filed within thirty (30) days after receipt of the responses to requests for admission and is timely filed under 28 U.S.C. § 1446(b).

5. The State Court action described above is one over which this Court has original jurisdiction under 28 U.S.C. § 1332, and one which may be removed to this Honorable Court pursuant to 28 U.S.C. § 1441(a) in that it is a civil action involving claims between diverse parties and the amount in controversy, exclusive of interest and costs, exceeds \$75,000. See

plaintiff's response to requests for admission, Exhibit "C", numbers 1, 2 and 3.

6. Petitioner has filed, concurrent with the filing of this Notice of Removal, a State Court Notice of Removal pursuant to 28 U.S.C. § 1446(d). A true, correct and genuine copy of this Notice is attached hereto as Exhibit "D".

WHEREFORE, Petitioner CROWN EQUIPMENT CORPORATION, d/b/a CROWN LIFTTRUCKS COMPANY, petitions that the state court action be removed to this Court for trial and determination; and that Petitioner have all additional and further relief, special or general, to which it may show itself justly entitled.

Respectfully submitted,

**SCOTT, HULSE, MARSHALL, FEUILLE,
FINGER & THURMOND, P.C.**

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By: 

ERIC M. BRITTAIN

State Bar No. 00783724

Attorney for Defendant CROWN EQUIPMENT
CORPORATION d/b/a CROWN LIFTTRUCKS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was mailed, certified mail, return receipt requested to Mr. Jose Montes, Jr., 1155 Westmoreland Dr., Suite 120, El Paso, Texas 79925 and to Mr. Jeff Ray, Ray, Valdez et al, 5822 Cromo Drive, Suite 400, El Paso, Texas 79912 on this 23rd day of June, 2003.



ERIC M. BRITTAIN